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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. KEVIN FRANK RASHER, Defendant and Appellant.	G055704 (Super. Ct. No. 16CF1377) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert Alan Knox, Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

This case has a somewhat convoluted history. Since the appeal directs itself exclusively to issues raised by appellant after he entered his guilty pleas in October of 2017, we will not recount the underlying facts. Suffice it to say, appellant's illegal activities related to mortgage fraud resulted in his being charged with forty-nine felony violations of Penal Code section 186.10, subdivision (a) (money laundering), and one felony violation of Revenue and Taxation code section 19705, subdivision (a) (2) (aiding in the filing of a false or fraudulent tax return), along with the enhancing allegation that the loss related to the illegal transactions was more than $1,000,000 and less than $2,500,000. While represented by counsel, appellant entered guilty pleas to all fifty felony charges and admitted the related enhancement in return for a prison sentence of twelve years.

Appellant had apparently been previously prosecuted in federal court for the same or similar misconduct. The record before us is not clear as to whether the state charges involved victims identical to those who were the subject matter of the federal case, but we infer that some of the victims may have been the same. Prior to the time he entered his guilty pleas in state court, appellant pled guilty and was sentenced in federal court to ninety-seven months in federal prison. When appellant entered his guilty pleas in state court, it was noted on his *Tahl*[1] form that his state prison sentence would be served "concurrent with Federal sentence & may be served in a Federal prison." On that same guilty plea form, appellant acknowledged that he was guilty of the fifty felony counts set forth and that he was entering his pleas because "I am in fact guilty and for no other reason."

On November 28, 2017, appellant filed his notice of appeal. On December 1, 2017, this court advised appellant that it was considering dismissing his appeal since he had failed to secure a certificate of probable cause. On December 4,

[1] *In re Tahl* (1969) 1 Cal.3d 122.

2017, Appellate Defenders, Inc. filed an amended notice of appeal on appellant's behalf challenging appellant's sentence and other matters that had allegedly occurred after appellant entered his guilty pleas. Thereafter, this court invited appellant to file points and authorities to explain why his appeal should not be so limited. Appellant did not respond to this invitation. His appeal is therefore limited to matters related to his sentence or other issues that arose after the entry of his guilty pleas.

On August 23, 2018, we appointed counsel to represent appellant. On November 9, 2018, counsel filed a brief pursuant to the procedures set forth in *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. In his attached declaration counsel indicated that "[a] staff attorney at Appellate Defenders, Inc. reviewed the record." Counsel did not argue against appellant, but advised the court he was unable to find any issue to argue on appellant's behalf. Counsel also indicated he had advised appellant that he "may personally file a supplemental brief in this case raising any issues which he chooses to call to the court's attention." Appellant has not filed a supplemental brief.

Counsel suggests in his brief that appellant believes his conviction should be overturned based upon a Fifth Amendment double jeopardy violation. Specifically, counsel writes that "[a]ppellant claims that the charges of which he was convicted in the instant case are the same charges he faced in federal court case no. CR1600108."

We have examined the entire record and, like counsel, have not found an arguable issue on appeal. Accordingly, we affirm the judgment.

FACTS

As indicated above, this appeal is limited to issues related to appellant's sentence or other issues that arose after his conviction. We must recite the facts "in the light most favorable to the judgment. . . ." *People v. Johnson* (1980) 26 Cal.3d 557, 578.

On October 13, 2017, while represented by counsel, appellant executed a comprehensive *Tahl* form before he entered guilty pleas to fifty felonies; during the same proceeding, he admitted a related enhancement. He was then sentenced to twelve years in state prison. It was agreed as a part of the negotiated disposition that appellant could serve the initial portion of his state prison sentence in federal prison where he was then serving a term of ninety-seven months. Not long thereafter appellant began to correspond with this court. In a handwritten letter dated July 14, 2018, appellant asserted "I am sitting in prison for a crime I don't believe I am guilty of." Appellant's basis for making such a statement is not clear; neither is his thinking as to exactly where the court erred in accepting his guilty pleas and imposing the twelve-year prison sentence that he agreed to both orally and in writing.

DISCUSSION

Following the *Wende* guidelines, we have reviewed counsel's brief and the entire appellate record. Applying any potentially applicable standard, we find no error at any stage of these proceedings. Our review of the entire record has not disclosed any issue reasonably arguable on appeal.

His appointed counsel suggests that appellant apparently believes he is the victim of a Fifth Amendment violation since he asserts that he was prosecuted twice, first in federal court and then in state court, for the same misconduct. His counsel does not join appellant in this argument for good reason. First, it is not clear from the record before us that appellant was prosecuted for identical misconduct in his federal and state cases. His assertions do not prove the facts asserted. Second, the law is well established that, even if appellant was prosecuted twice for the same misconduct, pursuant to the "dual sovereignty doctrine," such essentially duplicate prosecutions are permissible if the

same conduct violates both state and federal law. (See, e.g., *Bartkus v. People of the State of Illinois* (1959) 359 U.S. 121; *Abbate v. United States* (1959) 359 U.S. 187.)

DISPOSITION

The judgment is affirmed.

GOETHALS, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.